UTAH DEPARTMENT OF TRANSPORTATION

ACQUIRING PROPERTY FOR UTAH'S TRANSPORTATION PROJECTS

An Information Brochure For Property Owners

(Draft Version as of 11/10/08)

Developed for use by the Department of Transportation, Right of Way Division

ACQUISITION BROCHURE

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INTRODUCTION

Government programs designed to benefit the public as a whole often result in acquisition of private property and sometimes in the displacement of people from their residences, businesses, or farms. Acquisition of this kind has long been recognized as a right of government and is known as the power of eminent domain. The Fifth Amendment of the Constitution states that private property cannot be taken for public use without just compensation.

Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and amended it in 1987 to provide uniform and equitable treatment for people whose property is acquired for public use. This law, called the Uniform Act, is the foundation for the information discussed in this brochure.

Revised rules for the Uniform Act were published in the Federal Register / Vol. 73, No. 142 / Wednesday, July 23, 2008. The rules are reprinted each year in the Code of Federal Regulations (CFR), Title 49, Part 24. All Federal, State and Local government agencies, as well as others receiving Federal financial assistance for public programs and projects that require the acquisition of real property must comply with the policies and provisions set forth in the Uniform Act and the regulations.

The acquisition itself does not need to be federally-funded for the rules to apply. The rules of the Uniform Act apply if federal funds are used in any phase of the program or project. The rules encourage acquiring agencies to negotiate with property owners in a prompt and amicable manner to avoid litigation.

This brochure explains the rights of an owner of real property that will be acquired for a federally-funded program or project. The requirements for relocation assistance are explained in a brochure entitled *Relocation*, *Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program*.

Acquisition and relocation information can be found on the Federal Highway Administration (FHWA) Office of Real Estate Services website:

www.fhwa.dot.gov/realestate, the agency responsible for the federally-funded program or project in your area will have specific information regarding the acquisition. Please contact the sponsoring agency to receive answers to your specific questions.

UDOT Right of Way Vision

We anticipate and fulfill the right of way needs of our customers. We accomplish this by fostering a dynamic environment in which employees exhibit personal leadership to achieve the goals and objectives of the Division.

UDOT Right of Way Mission Statement

To clear the right of way for Utah's transportation needs according to the highest professional standards. We strive to provide a positive experience for our customers, minimize stress caused by the acquisition process, and respect our fiduciary duty to the taxpayers of Utah.

TERMS USED IN THIS BROCHURE

<u>Acquisition</u> – The process of acquiring real property (real estate) or some interest therein.

<u>Agency</u> – A Federal, State, or Local government organization. A non-government organization such as a utility company or person using Federal financial assistance for a program or project that acquires real property or displaces a person.

<u>Appraisal</u> – A written statement independently and impartially prepared by a qualified appraiser setting a defined value of an adequately described property as of a specific date supported by the presentation and analysis of relevant market information.

<u>Condemnation</u> – The legal process of acquiring private property for public use or purpose through the agency's power of eminent domain. Condemnation is usually not used until all attempts to reach a mutually satisfactory agreement through negotiations have failed. An agency then goes to court to acquire the needed property.

<u>Easement</u> – The right of one person to use all or part of the property of another person for some specific purpose. Easements can be permanent or temporary such as limited to a stated period of time. The term may be used to describe either the right itself or the document conferring the right. Examples are: permanent easement for utilities, permanent easement for perpetual maintenance of drainage structures, and temporary easement to allow reconstruction of a driveway during construction.

<u>Eminent Domain</u> – The right of government to take private property for public use. In the U.S., just compensation must be paid for private property acquired for federally-funded programs or projects.

<u>Fair Market Value</u> – Market value that has been adjusted to reflect constitutional and other legal requirements for public acquisition.

<u>Interest</u> – A right, title, or legal share in something. People who share in the ownership of real property have an interest in the property.

<u>Just Compensation</u> – The price an agency must pay to acquire real property. An agency official makes the estimate of just compensation to be offered to you for the property needed. The amount cannot be less than the amount established in the approved appraisal report as the fair market value for the property. The amount determined by the court will be the just compensation for the property if you and the agency cannot agree on the amount of just compensation to be paid for the property and it becomes necessary for the agency to use the condemnation process.

<u>Lien</u> – A charge against a property in which the property is the security for payment of a debt. A mortgage and taxes are liens. Liens must be paid in full when the property is sold.

<u>Market Value Market</u> – The sale price that a willing and informed seller and a willing and informed buyer agree on for a particular property.

<u>Negotiation</u> – The process used by UDOT to reach an amicable agreement with a property owner for the acquisition of property. An offer is made for the purchase of property in person or by mail and the Right of Way agent will discuss the offer with the property owner.

<u>Person</u> – An individual, partnership, corporation, or association.

<u>Personal Property</u> – Property that can be moved. It is not permanently attached to or a part of the real property. Personal property is not included and valued in the appraisal of real property.

<u>Program or Project</u> – Any activity or series of activities undertaken by an agency where Federal financial assistance is used in any phase of the activity.

<u>Waiver Valuation</u> – An administrative process for estimating fair market value for relatively low-value, noncomplex acquisitions and is prepared in lieu of an appraisal. These are also known as Administrative Compensation Estimates.

PROPERTY APPRAISAL

UDOT determines what specific property needs to be acquired for a planned public program or project after the State and FHWA requirements have been met.

UDOT will notify you if your property or a portion of it needs to be acquired. An appraiser will make an appointment with you or a designated representative to inspect the property. You can point out during the inspection any unusual or hidden features of the property that the appraiser may overlook and advise the appraiser if any of these conditions exist:

- 1. Other people have ownership or interest in the property.
- 2. Tenants live on the property.
- Real or personal property that belongs to someone else is located on your property.
- 4. Hazardous material, underground storage, or utilities are present.

The appraiser will consider normal depreciation, physical deterioration, and compare your property with other similar properties that have sold in the area to determine the initial fair market value of the property. The appraiser will submit an appraisal report describing the property and UDOT will determine a value based on the property condition on the day it was inspected. By law, the appraiser must disregard the influence of future public projects on the value of the property. This requirement may be partially responsible for any difference in the fair market value and market value of the property.

JUST COMPENSATION

Once fair market value is determined, the appraisal is reviewed for accuracy in appraisal standards and requirements. The approved appraisal is used to determine the amount you will be offered as just compensation for your real property. This amount will never be less than the fair market value established by the approved appraisal.

Damages or benefits may be paid to you for remaining property if the agency is only acquiring a part of your property. Allowable damages or benefits are reflected in the just compensation amount. UDOT will prepare a written just compensation offer when negotiations begin.

Buildings, Structures, and Improvements

Buildings, structures, or other improvements located on your property may be considered real property. UDOT must offer to acquire at least an equal interest in them if they must be removed or if UDOT determines that the improvements will be adversely affected by the public program or project. An improvement is valued as real property regardless of who owns it.

Tenant-Owned Buildings, Structures and Improvements

Lease tenants have the right or obligation when the lease expires to remove improvements they have built or added for their use. UDOT must make an offer to the tenants to acquire the improvements if they are considered to be real property under State law.

Tenant-owners must assign, transfer, and release to UDOT all rights, title, and interest in the improvements before they can be paid for the improvements. The owner of the real property on which the improvements are located must disclaim all interest in the improvements. Just compensation for an improvement is the amount the improvement contributes to the fair market value of the whole property or its salvage value for removal from the property, whichever amount is greater. A tenant-owner can reject payment for the tenant-owned improvements and obtain payment for property interests in accordance with other applicable laws. UDOT cannot pay for tenant-owned improvements if such payment will result in the duplication of any other compensation otherwise authorized by law.

Tenant-owners may be reimbursed for moving improvements considered personal property under State law under the relocation assistance provision. UDOT will personally contact the tenant-owners of improvements to explain the procedures. All payments must be in accordance with Federal rules and applicable State laws.

EXCEPTIONS TO THE APPRAISAL REQUIREMENT

The Uniform Act requires that all real property be appraised before it is acquired but it also authorizes waiving that requirement for low-value acquisitions.

Appraisal regulations may be waived:

- 1. If the property is donated, UDOT is released from appraisal requirements.
- 2. If UDOT believes the property acquisition is uncomplicated and a review of available data supports a fair market value of \$10,000 or less, a waiver valuation can be used rather than an appraisal to estimate fair market value.

3. If UDOT believes the property acquisition is uncomplicated and a review of available data supports a fair market value of over \$10,000 but less than \$25,000, a waiver valuation can be used rather than an appraisal to estimate fair market value, if you, as the owner, waive your right to have the property appraised. An appraisal will be obtained if you do not waive that right and instead request an appraisal from UDOT.

THE WRITTEN OFFER

After UDOT approves the just compensation offer, it begins negotiations with you or your designated representative by delivering the written offer of just compensation for the purchase of your real property. This offer will be delivered in person by a UDOT representative or the offer will be mailed and followed up by telephone. All property owners with known addresses will be contacted unless they collectively have designated one person to represent their interests. A UDOT representative will explain agency acquisition policies and procedures with an informational brochure or in person.

UDOT's written offer will consist of a written summary statement that includes all of the following information:

- 1. The amount offered as just compensation
- 2. The description and location of the property and the interest to be acquired
- 3. The identification of the buildings and other improvements that are considered to be part of the real property.

The offer may list items of real property that you may retain and remove from the property and the retention values. The offer will be reduced by the value of the items retained if you decide to retain any or all of these items. You are responsible for removing the items from the property in a timely manner. UDOT may withhold a portion of the offer until the retained items are removed from the property.

UDOT will identify tenant-owned and other ownership interests in the property. UDOT may negotiate with each person who holds a separate ownership interest or may negotiate with the primary owner and prepare a check payable jointly to all owners.

UDOT will give you a reasonable amount of time to consider the written offer, ask questions, or seek clarification. You may present information not considered during the appraisal at this time. You may request modifications to the proposed terms and conditions of the purchase. UDOT will consider any reasonable requests made during negotiations.

Partial Acquisition

UDOT will usually purchase only what it needs and will state the amount to be paid for the part to be acquired. An amount will be stated separately for any damages to the portion of the property you will keep. UDOT will offer to purchase remaining property that will have little value or no use to you. You have the option of accepting the offer to purchase or keeping the property.

Agreement Between Owners and UDOT

You will be asked to sign an option to buy, purchase agreement, easement, or some form of deed prepared by UDOT when an offer agreement is reached. The signature affirms that you and UDOT agree on the property acquisition including terms and conditions.

UDOT may suggest mediation or arbitrations if agreement cannot be reached because of some point connected with the acquisition offer. UDOT will initiate condemnation proceedings if it thinks a settlement cannot be reached before it needs possession of the property.

UDOT will not take any of the following actions to force you into accepting its offer:

- 1. Advancing the condemnation process
- 2. Deferring negotiations
- 3. Deferring condemnation
- 4. Delaying the deposit of funds with the court for use when condemnation is initiated
- 5. Any other coercive action designed to force an agreement regarding the price to be paid for the property

ACQUISITIONS WHERE CONDEMNATION WILL NOT BE USED

UDOT may have the power of eminent domain but not use it or it may not have the power of eminent domain for the program or project. In this case, you will be informed in writing before negotiations begin by UDOT that it will not condemn your property if agreement cannot be reached. UDOT will inform you in writing what it believes the fair market value of the property is before making an offer. Under these circumstances, you are not eligible for relocation assistance benefits. Tenants on the property may be eligible for relocation benefits.

PAYMENT

The next step in the acquisition process is payment for the property. As soon as all the necessary paperwork is completed for property title transfer, UDOT will pay any existing liens against the property and pay equity to you. Incidental expenses incurred as a result of transferring title to UDOT will be paid or reimbursed such as:

- 1. Recording fees and transfer taxes
- 2. Documentary stamps
- 3. Surveys and legal descriptions of the real property
- 4. Evidence of title
- 5. Other expenses necessary to convey the property to UDOT

UDOT is not required to pay costs to perfect the title or insure that the title to the real property is entirely without defect.

Penalty costs and other charges for prepaying any preexisting recorded mortgage entered into in good faith encumbering the real property will be reimbursed. The pro rata share of any prepaid real property taxes that can be allocated to the period after UDOT obtains title to the property or takes possession will be reimbursed. UDOT will pay these costs directly if possible so you will not need to pay the costs and then claim reimbursement.

POSSESSION

UDOT may not take possession of your property unless:

- 1. You have been paid the agreed purchase price.
- 2. UDOT has deposited with the court an amount for your benefit and use that is at least the amount of UDOT's approved appraisal of fair market value of the property in the case of condemnation.
- UDOT has paid the amount of the court awarded compensation in the condemnation proceeding.

If UDOT takes possession while people still occupy the property:

- 1. All people occupying the property must receive a written notice to move at least 90 days in advance of the required move date. In this context, the term people includes residential occupants, homeowners, tenants, businesses, non-profit organizations, and farms.
- 2. An occupant of a residence cannot be required to move until at least 90 days after a comparable replacement dwelling has been made available for occupancy. Only in unusual circumstances such as when continued occupancy will constitute a substantial danger to the health or safety of the occupants, can vacation of the property be required in less than 90 days.

SETTLEMENT

UDOT will make every effort to reach an agreement with you during negotiations. You may provide additional information and make reasonable counter offers and proposals for UDOT to consider. When it is in the public interest, UDOT uses the information provided as a basis for administrative or legal settlements as appropriate.

CONDEMNATION

UDOT can acquire the property by exercising its power of eminent domain if an agreement cannot be reached. It will do this by instituting formal condemnation proceedings with the appropriate State or Federal court. The condemnation action will take place in a Federal court and Federal procedures will be followed if the property is being acquired directly by a Federal agency. The condemnation action will take place in

State court and the procedures will follow State law if the property is being acquired by anyone else that has condemnation authority.

A board of viewers or commissioners or a similar body, will initially determine the amount of compensation due for the property. You and UDOT will be allowed to present information to the court during these proceedings. UDOT has the right to institute legal action against you if the amount of just compensation cannot be negotiated. You have the right to request arbitration through the Ombudsman if you would rather arbitrate eminent domain issues than go to court. You have the right to arbitrate even if UDOT objects if the Ombudsman determines that arbitration is appropriate.

A trial by a judge or a jury may be scheduled if legal actions are commenced through condemnation. The court will set the final amount of just compensation after it has heard all arguments.

Litigation Expenses

UDOT normally does not reimburse for costs incurred as a result of condemnation proceedings. UDOT will reimburse under any of the following conditions:

- 1. The court determines that UDOT cannot acquire the property by condemnation.
- 2. The condemnation proceedings are abandoned by UDOT without an agreed-upon settlement.
- 3. You initiate an inverse condemnation action and the court agrees that UDOT has taken real property rights without the payment of just compensation or UDOT elects to settle the case without further legal action.
- 4. UDOT is subject to State laws that require reimbursement for these or other condemnation costs.

This information is provided to help you understand the requirements that UDOT must meet and your rights and obligations. Contact your UDOT representative if you have any questions. Additional information on Federal acquisition requirements, the law, and the regulation can be found at www.fhwa.dot.gov/realestate

EXECUTIVE SUMMARY OF YOUR RIGHTS

- 1. Fair Market Value You have the constitutional right to receive "just compensation" when UDOT acquires your property. Just compensation can include compensation for a decrease in the market value of the portion of your property that remains when part of your property is acquired if that decrease in value occurs because of the public improvements planned. In some cases, just compensation can include damages caused by the project to property that is not acquired but which is damaged by the project.
- 2. <u>Full Payment</u> You have the right to receive full payment for "just compensation" in the full amount that is determined by negotiations or by a court, jury, mediation, or arbitration before UDOT takes title to your property.

- 3. <u>Early Occupancy</u> You are entitled to receive money that UDOT is offering you for the acquisition of your property before they occupy it if it wishes to occupy your property before "just compensation" can be agreed upon. In such cases, you may still reserve the right to have the "just compensation" determined by a court, jury, mediation, or arbitration.
- 4. <u>Public Documents</u> You have the right to examine and make copies of any public documents including project maps, specifications, or other project materials in UDOT's possession.
- 5. Open Meetings You have the right to attend any meetings held by an elected or appointed councilor commission to discuss the project and to tape record the proceedings. You do not have the right to speak unless the meeting is a public hearing. You may be legally excluded if the officials move to go into an executive session to discuss the acquisition of real property or to discuss imminent legal proceedings.
- 6. Other Property Owners You have the right to request that UDOT provide a list of any other property owners whose property is also being acquired for the project.
- 7. <u>Public Purpose</u> You have the right to know for what public purpose you property is being acquired and to challenge the need for the acquisition.
- 8. Offer and Negotiation You have the right to negotiate with UDOT before condemnation proceedings begin. For that purpose, UDOT is required to provide you with a written property value and estimate of damages thatmay arise as a result of the acquisition.
- 9. <u>Appraiser</u> You have the right to accompany the UDOT appraiser during the property inspection and to talk to the appraiser before a value is reached.
- 10. <u>Appraisal</u> You have the right to know the appraised property value amount, any damages assessed, and to request a copy of the appraisal report. If a copy is denied, you are entitled to know what appraisals exist and why you are not allowed to see them during negotiations. You will be entitled to see the appraisals before the hearing if the matter goes to formal mediation, arbitration, or trial.
- 11. Other Damages Your right to just compensation includes payment for the land and any improvements on the land if they contribute value to the property. Just compensation also includes the net lost value of any remaining property that you keep, known as "severance damages". You may also be entitled to just compensation for any special and unique damage done to any portion of your property that is not acquired for the project and for any temporary occupancy of any portion of your property that is not being acquired but which must be used by UDOT or its contractors during construction of the project.
- 12. Relocation Costs You have the right to be paid certain relocation expenses from UDOT if it requires you to move as a result of the acquisition. These amounts are determined by statute but may be mediated or arbitrated if, after exhausting the appeals process, UDOT decides to review because a dispute still exists.

- 13. Replacement Dwelling You have the right to be offered a comparable replacement dwelling that is safe and sanitary and reasonably close to your employment and public services if you are displaced from your home.
- 14. <u>Displaced Business or Farm</u> You have the right to receive UDOT assistance in identifying replacement properties available on the private market located within UDOT's jurisdiction, if your small business or farm is displaced by a project.
- 15. <u>Prior Notice</u> Unless an emergency exists, you have the right to receive a 90-day written notice before a move is required.
- 16. Rollback Taxes You have the right to have UDOT pay any greenbelt rollback taxes if the acquisition results in your land losing greenbelt status.
- 17. Ombudsman You have the right to consult with the State of Utah Private Property Ombudsman to inquire about your rights and responsibilities in eminent domain proceedings. (Please contact <u>The Office of the Property Rights Ombudsman.</u>)
- 18. <u>Second Appraisal</u> You have the right to an additional appraisal at UDOT's expense if you request it and the Ombudsman or an appointed mediator or arbitrator considers the appraisal necessary to resolve a dispute about just compensation.
- 19. <u>Alternative Dispute Resolution</u> UDOT has the right to institute legal action against you if the amount of just compensation cannot be negotiated. You have the right to request arbitration through the Ombudsman if you would rather arbitrate eminent domain issues than go to court. You have the right to arbitrate even if UDOT objects if the Ombudsman determines that arbitration is appropriate.
- 20. <u>Evidence</u> You have the right to offer any relevant and admissible evidence at arbitration or trial, including the use of expert witnesses, to justify the amount of just compensation you consider appropriate. Any witness testifying to property value must be a licensed appraiser.
- 21. <u>Disclosure and Review</u> You have the right to know and examine any evidence that will be used by UDOT to establish the amount of just compensation prior to formal mediation, arbitration, or trial. This includes copies of any appraisals UDOT has obtained to determine just compensation and other evidence they plan to offer.
- 22. <u>Testify</u> You have the right to testify at arbitration and if qualified, to testify at trial regarding the value of your property.
- 23. <u>Cross Examination</u> You have the right at arbitration or trial to cross examine the UDOT expert witnesses used to establish the amount of just compensation.
- 24. <u>Appeal</u> You have the right to appeal to the District court if you are not satisfied with an arbitrator's determination.
- 25. <u>Jury Trial</u> You have the right to choose to have the amount of compensation determined by a jury rather than by a judge if the matter goes to court.

26.	Appellate Review – You have the right to appeal a District Court decision to an appellate court, if appropriate.

UDOT Region Offices and Ombudsman Addresses

UDOT Right of Way Division

4501 South 2700 West Salt Lake City, UT 84114-8420 (801) 965-4209 Mailing Address: Box 148420 Salt Lake City, UT 84114-8420

Region One

166 West Southwell Street Ogden, UT 84404-4194 (801) 620-1600

Region Two

2010 South 2760 West Salt Lake City, UT 84104 (801) 975-4900

Region Three

658 North 1500 West Orem, UT 84057 (801) 277-800

Region Four

1345 South 350 West Richfield, UT 84701 (435) 893-4799

Region Four

Price District

940 South Carbon Avenue Price, UT 84501-0903 (435) 636-1400

Richfield District

708 South 100 West Richfield, UT 84701 (435) 896-1399

Cedar City District

1470 North Airport Road PO Box 1900 Cedar City, UT 84721-1009 (435) 865-5500

Property Rights Ombudsman

Heber M. Wells Building 160 East 300 South Salt Lake City, UT 84111 (801) 530-6391 Fax: (801) 530-6338 Mailing Address: PO Box 146702 Salt Lake City, UT 84111-6702

Email: propertyrights@utah.gov

Toll free: 1-877-882-4664